

AGENDA ITEM VII
OFFICEHOLDER EXPENSE RULE
LETTERS FROM THE PUBLIC (4)

PHIL LOPES
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Arizona House of Representatives
Phoenix, Arizona 85007

LEADER, HOUSE DEMOCRATS

RULES, RANKING MEMBER

GOVERNMENT REFORM AND
GOVERNMENT FINANCE
ACCOUNTABILITY

JOINT COMMITTEE ON
CAPITAL REVIEW

July 18, 2005

Citizens Clean Elections Commission
1616 W. Adams
Phoenix, AZ 85007

Dear Commissioners:


The undersigned legislators, each of whom have run at least twice "clean", want to express our opposition to the new Officeholder Expense Rule being proposed by your subcommittee.


The voters created Clean Elections in 1998 to reduce the influence of lobbyist and other special interest money on Arizona state government. This proposed rule takes us in the opposite direction. It would allow each elected official to collect contributions up to \$240 from individuals, four times the current limit. The total permitted funds raised for lawmakers would be nearly \$12,000 in private interest money under the proposed changes. Statewide officials could take in as much as \$185,000 in the case of the governor. The total amount involved could exceed \$1.7 million every two years.

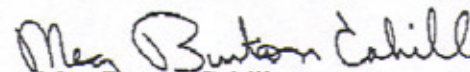
While there are expenses incurred by officeholders, the proposed limits for both the individual and aggregate contributions are far too high. While it would be ideal to have legislative appropriations cover such costs, that is impractical in these tight economic times. We believe the contributions limits should remain at \$60. In addition, other sources of revenue should be explored for appropriate expenses other than individual donations to officeholders.

This rule undermines the fundamental intent of the Clean Elections Act to reduce the influence of special interest money in government. We urge the commission to reject the contribution limits of the proposed rule.

Sincerely,


Phil Lopes
Leader, House Democrats
District 27


Manuel Alvarez
Representative, District 25


Meg Burton Cahill
Representative, District 17



Clean Elections Institute, Inc.

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July 19, 2005

RECEIVED

JUL 19 2005

CITIZENS CLEAN ELECTIONS
COMMISSION

Citizens Clean Elections Commission
1616 W. Adams Suite 110
Phoenix, AZ 85007

Dear Chair Busching and Commissioners:

I am writing in my capacity as Board President of the Clean Elections Institute in opposition to proposed changes in the Officeholder Expense Rule.

The result of these proposed changes would be to substantially raise the amount of money each legislator and statewide official could collect from lobbyists and other special interests. Our lawmakers would be allowed to take roughly \$12,000 in private funds, while statewide officeholders could receive from \$24,000 to nearly \$200,000.

This is a bad idea for several reasons. First, these accounts are not necessary at all and were never considered in the initiative that was passed by the voters. These accounts are just another perk of incumbency, created by the Commission's over reaching rulemaking process and do not further the intent of the law. Second, the amounts being considered are too high. This money represents a virtual slush fund for incumbents, allowing them the opportunity to keep their name before voters between elections. Next, this proposal would allow lobbyists and the special interests they represent to further influence legislators by creating another way for them to give money to incumbent candidates. And finally, especially in the case of Clean Elections candidates, this rule would inject more special interest money into state politics, directly violating one of the prime purposes of the Clean Elections Act.

If the expenses covered by the rule are truly legitimate costs of holding office, which I do not believe they are, the funding should come from legislative appropriation, not contributions. The Clean Elections Institute has never supported these accounts and we continue to strongly oppose expanding the scope of them.

We hope that you will reject this rule and reconsider your previous rule creating the accounts.

Sincerely,

Wes Gullett, Board President
Clean Elections Institute, Inc.



Clean Elections Institute, Inc.

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July 21, 2005

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JUN 21 2005

CITIZENS CLEAN ELECTIONS
COMMISSION

Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007

Dear Commissioners:

Thank you for creating the officeholder expense subcommittee and appointing me to serve on it. I am writing to emphasize a few important points that came out of the committee meetings. First, I believe that the final recommendations to you regarding the individual and aggregate contribution limits would likely have been different if all members had voted. Second, I urge you to seek an Attorney General's opinion regarding the authority to promulgate officeholder expense rules. And third, I request you to obtain a legal opinion regarding donations to such accounts counting towards campaign limits.

I was on vacation at the time of the July 5th meeting and Doug Ramsey from the Institute was not allowed to vote in my absence. I did not know Doug would not be allowed to vote in my stead although he had attended all the previous meetings. Anyway, I would have voted against the increase in both the individual and aggregate limits. Another committee member, Bart Turner was out of state and could not attend the July 5th meeting. I believe he would have opposed the proposed increased limits. I do not know what Commissioner Scaramazzo's position is on these issues.

I strongly believe the Commission should ask the Attorney General's office for an opinion whether the Citizens Clean Elections Act gives the Commission the authority to promulgate rules creating officeholder expense accounts. A.R.S. 16-941 (A) states:

Notwithstanding any law to the contrary, a participating candidate:

1. Shall not accept **any contributions**, other than a limited number of five-dollar qualifying contributions as specified in A.R.S. 16-946 and early contributions as specified in A.R.S. 16-945, except in the emergency situation specified in A.R.S. 16-954, subsection E. (emphasis added)

To further understand the meaning of "contribution" one can read a May 1, 2000 Attorney General opinion for then Representative Jeff Hatch-Miller which says this of constituent expenses,

"...the Legislature has also expressly specified that monies for constituent communication are contributions, except if those constituent communication

expenses are paid for by the State or a political subdivision." The opinion goes on to say, "The specific legislative inclusion of constituent communications in the definition of contributions bring all donations for constituent communications within the campaign finance regulatory scheme, making them subject to contribution limits and disclosure requirements."


It appears from this opinion that contributions to these accounts count towards an individual's total contribution limit to a candidate and towards the donor's personal limit of \$3,530 in a calendar year. It had been stated repeatedly by the previous executive director that contributions to the officeholder accounts were a separate category that did not fall under the campaign finance contribution limits of the candidate or donor. Since officeholder expense accounts permit constituent communications, the two are considered to be the same and subject to the same interpretations. I request that you obtain a legal opinion as to whether contributions to officeholder accounts are subject to the limitations of campaign contribution.

I am in support of the recommended changes to the permitted uses of the officeholder accounts as well as the changes to the timeframe when contributions may be received and expended.

The Institute is opposed to officeholders who ran under the Clean Elections law seeking private contributions for these accounts because it is contrary to the fundamental purpose of the Act, which is to diminish the influence of money in politics.

Thank you for consideration of this important matter that directly impacts the integrity of the Clean Elections law.

Sincerely yours,



Barbara Lubin
Executive Director

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Patents, Trademarks, Copyrights
& Trade Secrets

July 22, 2005

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION
1616 West Adams, Suite 110
Phoenix, Arizona 85007

RECEIVED

JUL 25 2005

CITIZENS CLEAN ELECTIONS
COMMISSION

Re: Comments on Proposed Rule
Officeholder Expense Rule R2-20-104(F)

Honorable Commissioners:

In 1997, I had the privilege of drafting the Arizona Clean Elections Act, in my role as volunteer-member of the citizens' committee that put the Proposition 200 initiative on the ballot, Arizonans for Clean Elections. I have been asked to comment on the Commission's proposed rule regarding officeholder expenses. I have kept my input in Commission affairs to a minimum since the Act's passage, but I am concerned about this proposed rule sufficiently to require comment.

I understand that you will be considering the matter at your meeting next Friday, July 29th. Unless asked to appear, I do not plan to attend, but I hope that you will consider the below comments carefully. I am not representing any organization or client.

I believe that the proposed revised rule is inconsistent with the spirit of the Clean Elections Act and runs an unacceptable risk of undermining some of the main purposes of the Act. I urge you to reject it or make substantial modifications.

As indicated in the findings and declarations in the Act itself, "the people of Arizona" found that the pre-existing system of election-financing "allows Arizona elected officials to accept large campaign contributions from private interests over which they have governmental jurisdiction," and "gives incumbents an unhealthy advantage over challengers." A.R.S. §16-940(B)(1),(2). One of the consequences is that this "undermines public confidence in the integrity of public officials." A.R.S. §16-940(B)(5).

I believe that the proposed rule suffers from the same kinds of problems.

The rule, if promulgated, would allow candidates to accept contributions from private interests, and it appears to: 1) allow any particular individual to pay an officeholder twice the early contribution limit, and 2) to allow the overall amount of money raised and spent to be four times the early contribution limit. R2-20-104(F)(3), (4).

LOUIS J. HOFFMAN, P.C.

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

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It is important to understand what those amounts mean. The early contribution limit is set by the Act at \$40,000 for the Governor and 10% of the total campaign funds, for other candidates. A.R.S. §16-945(A)(2). The figures stated in the Act are increased for population growth and inflation. A.R.S. §16-959. For the 2006 campaign, for example, the Governor's early contribution limit is \$46,440 and the legislators' limit is \$2,980.

Accordingly, the proposed rule would allow a single (presumably wealthy) individual to give \$92,880 to the Governor for her officeholder account, and \$5,960 to any (or each) of the 90 legislators. Overall, the Governor could raise \$185,760 for her "officeholder account," and a legislator could raise \$11,945. One husband and wife team could fill up any officeholder's account, it seems.

Note that four times the early contribution limit, the amount that the proposed rule would allow to be spent through an officeholder account, for a legislator or any officeholder other than the Governor, is exactly the amount that the incumbent who is a participating candidate can spend (in most instances) for the entire primary election campaign!

Also notice that the Governor's annual salary is only \$95,000 (each of the legislators gets \$24,000). Accordingly, the Governor could have a privately contributed officeholder account that is nearly two years of salary, and legislators can have accounts that equal or exceed their campaign accounts.

The rule, worse, appears to allow certain expenditures that would have the dual purpose of campaigning and offsetting legitimate office expenses. Part 9 of the rule permits expenditures for "office equipment and supplies," "work-related travel," and "expenditures to meet or communicate with constituents." These functions can have collateral campaign purposes. For example, an incumbent who spends an office-holder account for office equipment and supplies need not use campaign money to buy such equipment. An incumbent can travel for "work-related" purposes, such as back to a home legislative district, at which time he or she might also wish to campaign while in the area. An incumbent may spend to "meet or communicate with constituents," which is inseparable from campaigning: if the incumbent sends out a mailer touting performance in office or highlighting accomplishments, that is clearly helpful in re-election as well.

Another change by the proposed rule is that it would require (in part 1) that "the officeholder shall arrange for the constituent communication, event or item to be paid for, fully utilized and/or completed" by May 31st of an election year. Note the "and/or" language. Does this mean that an officeholder could lawfully pay for an event before May 31st but schedule the event for the week before the primary election date, right in the midst of campaign season? If so, this change presents a huge loophole, which candidates clearly will exploit.

LOUIS J. HOFFMAN, P.C.

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

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Each commissioner has been selected from among those individuals "who are committed to ... seeking to uphold public confidence in the integrity of the electoral system." A.R.S. §16-955(B). The commission is empowered to "adopt rules to carry out the purposes and provisions of" the Clean Elections Act. A.R.S. §16-946(D).

The proposed rule would negatively impact public confidence in electoral integrity. It would step back to the days when wealthy individuals could influence election campaigns, even for participating candidates. It would tilt the playing field as between candidates with and without officeholder accounts. It would unfairly favor incumbents over challengers. As indicated at the beginning of this letter, the purpose of the Clean Elections Act was to avoid such problems.

I hope that I can count on each of you to reject, or at the very least substantially modify, this dangerous proposed rule. Thank you for your careful consideration and for your public service.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'L. Hoffman', with a stylized flourish at the end.

Louis J. Hoffman

LOUIS J. HOFFMAN, P.C.

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

July 22, 2005

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The proposed rule also could change the deadline from April 30 to May 31st which only increases the chance of using expenditures from officeholder accounts for campaign purposes.

I understand that incumbent legislators of both parties wish to have officeholder accounts to handle reasonable expenses of office and that there are some expenses that ought rightly to be excluded from being considered campaign funds. Assuming that the Commission wishes to accommodate that concern, I suggest the following precautions:

1. At the very least, the Rule should contain a clear bar on using officeholder account funds for any purpose that constitutes campaigning.

2. The Rule should bar use of officeholder account funds for meeting or communicating with constituents during or just before the campaign period. I would suggest January 1st of election year as an appropriate cutoff date.

3. The Rule should bar use of officeholder accounts for expenditures, without reimbursement, that have mixed campaign-office purposes. For example, if an incumbent travels to the district for a legitimate seminar and also to go around campaigning while he or she is there anyway, the officeholder account should not be allowed to be used for the travel.

4. The Rule should contain maximums that are far less than what the officeholders need for campaigning. The proposed maximums far exceed what is necessary or appropriate.

5. The Commission should try to avoid large, individual contributions to officeholder accounts. Ideally, the accounts should be funded by public monies, not private donations, to avoid conflicts or the appearance of conflict. Although perhaps the Commission cannot implement such a system by rule, the Commission can reduce the individual contribution limit so that no single contribution is large enough to influence a legislator or give the appearance of such. Note that the AzScam scandal, which was one of the driving forces behind the initiative, revolved around legislators who sought contributions of only a few thousand dollars.

Allowing individuals to contribute many thousands of dollars to thinly disguised officeholder war chests would bypass the purpose of the Clean Elections Act that the Commission is sworn to uphold. The proposed rule lacks the precautions needed to avoid the funds being used to supplement campaign funds, and the proposed rule evades the voter-approved purpose of avoiding the problems associated with major donors giving significant funds to lawmakers.